
**BZA-1906 & 1907
ALAN CULWELL
Variances & Special Exception**

**STAFF REPORT
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REQUESTS MADE, PROPOSED USE, LOCATION:

Petitioner, who is representing the property owner, Thurman Sanders, is requesting the following variances (BZA-1906) for an existing illegal breeding kennel:

1. To eliminate the requirement that the building where animals are kept be mechanically ventilated and temperature controlled (UZO 4-11-3-b-2); and
2. To permit a setback for a non-soundproofed building where animals are kept of 179' instead of the required 200' (UZO 4-11-3-b-3)

Petitioner is also requesting a special exception (BZA-1907) to legitimize an illegally expanded breeding kennel (SIC 0752).

The kennel, Sanders Collies, is located on 18 acres at the southwest corner of CR 1000 S and 700 E on property located at 10112 S 700 E, Lauramie 17 (NE) 21-3.

AREA ZONING PATTERNS:

This part of the county is solidly zoned AA, Select Agricultural. The zoning pattern does not change until the town of Stockwell, located about a mile north of petitioner's property.

There is no record of any BZA activity in this section of Lauramie Township.

AREA LAND USE PATTERNS:

Petitioner's mobile home and assorted outbuildings and corn cribs are located on the site. Surrounding properties in all directions are farm fields; the nearest neighbor is located over 1000' to the north. The kennel is located in a pole building where the sliding barn doors have been removed, so that the interior of the building is open to the elements.

TRAFFIC AND TRANSPORTATION:

County Road 700 E serves as a north/south connector from the southeastern portion of Tippecanoe County to Montgomery County, seeing nearly 1400 vehicles per day in 2012. Only 55 vehicles per day traveled along CR 1000 S in 2011.

The subject property has a single graveled access to 700 E. There are no delineated parking spaces on the submitted site plan. The ordinance requires one per employee plus one additional space for every 200 sq. ft. of office area. Sufficient area on site exists to provide all the required (unpaved) parking, which staff would estimate to be only two spaces, but petitioner must provide a new site plan which shows an area capable of accommodating required parking if the special exception request is approved.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

There are several environmental and public health concerns surrounding these requests. In October 2012, the County Health Department issued the following order to Mr. Sanders:

"This is to inform you that the Tippecanoe County Health Department has declared that the pole barn structure housing your business...to be a Public Health Hazard."

The Health Department's concerns are that the structure is not bird or rodent proof; it is a fire hazard; and lacks a proper on-site sewage disposal system for the removal of "highly polluting effluent." According to the County Health Department, if the special exception is granted, Mr. Sanders will have to meet its and Indiana State Department of Health requirements found in 410 IAC 6-10 regarding commercial on-site sewage disposal systems.

The ordinance requires that all kennel buildings housing animals be mechanically ventilated and temperature controlled. The Health Department adds that "fresh air ventilation is the most important component of indoor air quality...a large number of dogs in a structure like this that is not properly vented and air controlled results in air quality that is undesirable."

STAFF COMMENTS:

These cases have a history spanning over 18 months in the Area Plan Commission office; the Health Department has information dating back to 2011 regarding Mr. Sanders' kennel operation and complaints were filed with the Building Commission as far back as 2005. When a junkyard complaint was received by the Zoning Enforcement officer, the allegation was investigated and Mr. Sanders removed the junk. In 2008, Zoning Enforcement notified Mr. Sanders that operating a kennel without a special exception was a violation of the zoning ordinance, but recognized that if he could prove he was established before 1965, he would be grandfathered and allowed to continue as a non-conforming use (The ordinance permits uses that were established before the zoning ordinance became effective to remain in operation as long as the use does not expand beyond what it was in 1965). The issue of whether or not Mr. Sanders expanded his kennel operation since 1965 lay dormant until fall of 2012 when staff's legal counsel (acting in his role as attorney for the Zoning Enforcement Officer) issued the following letter to Mr. Sanders:

"The real estate located at 10112 S. 700 E., Clarks Hill, IN 47930 is located in a Select Agricultural (AA) zone. The Permitted Use Table of the Unified Zoning Ordinance, Section 3-2, only allows a dog breeding kennel (SIC Group 0752) to be operated in a Select Agricultural (AA) zone where a Special Exception for such use has been granted by the ABZA. No such Special Exception for the operation of a dog breeding kennel (SIC 0752) has ever been granted for the real estate located at 10112 S. 700 E., Clarks Hill, IN 47930. Accordingly, your current operation of a dog breeding kennel (SIC Group 0752) on the real estate constitutes a violation of the UZO."

This determination of a violation was made once it came to light that in 1990, an Improvement Location Permit (#10149) was issued that expanded petitioner's kennel operation. After that determination, in December 2012, Mr. Sanders filed an appeal of the decision of the Administrative Officer that his kennel expanded illegally. The decision was upheld by the BZA, requiring Mr. Sanders to comply with the ordinance. At that time, he had the option of applying for a special exception to legitimize the kennel. Instead, on May 24, 2013, Mr. Sanders opted to sue the Board of Zoning Appeals asking the court to override both the decision of the Administrative Officer and the Board's affirmation of that decision, and issue a declaratory judgment stating that the kennel operation is legally non-conforming. The court dismissed the case in October 2013.

Five days after filing the suit, Mr. Sanders filed a special exception request for a kennel (BZA-1885) to be heard at the June 2013 meeting. At the time he filed, staff advised him that two variances would also be needed: a setback variance and to eliminate the requirement that buildings where animals are kept must be mechanically ventilated and temperature controlled. The filing was never perfected, continued twice, and ultimately dismissed at the September 2013 meeting because petitioner failed to appear. There is a code enforcement action currently pending in the court which will also be dismissed if Mr. Sanders receives this special exception and meets the standards of the ordinance (either by benefit of variances or compliance).

Now, Mr. Sanders has retained new counsel and filed both a special exception to legitimize the illegally-expanded kennel and variances to allow a non-temperature controlled or mechanically ventilated building, as well as a setback of 179' instead of 200' from the nearest property line of that same building (which is also non-soundproofed; if the building were soundproofed the setback requirement is only 50' and variance #2 would not be needed).

Staff agrees with the petition that the request for a setback variance is "minor" at only 21' short of the standard, especially considering the property line abuts a public right-of-way. The property located across 700 E is a 25+ acre farm field. Even if that property were used as a building site, there is ample room for placement of a home to mitigate any negative effects from the non-soundproofed building across the street. However, staff also notes that if Mr. Sanders would insulate, ventilate, and heat/cool the building, neither variance would be required at all as the setback for sound-proofed buildings is only 50', not 200'. The solution to meet ordinance standards does not have to be "moving the building twenty-one feet" as is mentioned in the petition.

The reason given on the petition that a variance is requested from the ventilation and temperature control standard, is because border collies are herding dogs and cannot "do so if raised with heating and cooling systems" and "it is not in the dogs' best interest to be raised with heating and cooling." Staff included this requirement for all kennels in the ordinance for the protection and comfort of these future pets. In fact, the USDA's guidelines on temperature and humidity in dog kennels state that dogs should not be subjected to combinations of temperature and humidity that would be detrimental to their health. It further addresses dogs' inability to dissipate body heat and low tolerance for extended periods of high heat, as well as puppies' lack of ability to effectively regulate body temperature. In fact, the recommended breeding conditions for dogs occur when temperatures are between 60-68° with a humidity of about 65%. Staff can find no compelling reason to waive this requirement.

Staff recognizes that Mr. Sanders has operated some kind of a kennel on the site for many years, expanded illegally and is now trying to legitimize the use and continue operation. Had Mr. Sanders not illegally expanded the use in 1990 (as proven in the Administrative Officer's decision), the use could have continued as non-conforming and exempt from the current development standards. Now that it was determined Mr. Sanders expanded illegally, staff and the Board have a responsibility to evaluate whether this use aligns with the intent of the current zoning ordinance.

The submitted site plan shows utilization of the existing building with no new construction on site. The petition additionally clarifies that there will be no outdoor lighting, one additional vehicle per week at the property and no increased noise levels. Hours of operation are proposed as 7 am until 10 pm, seven days per week. Regarding these items, staff does not believe there will be material or permanent injury to other properties or uses in the area.

However, staff believes this use *will* subvert the general purposes of the ordinance. One of the guiding provisions of the Unified Zoning Ordinance is to “promote health and welfare” (UZO 1-2). Mr. Sanders is not effectively removing waste, is not mitigating public health risks, and requires variances to continue operating his illegal kennel. In fact, based on communication from the County Health Department, conditions on the site have continued to decline since the first complaint was filed prompting the pole barn to be declared a “Public Health Hazard.”

That being said, if petitioner insulates, ventilates, and temperature controls the building where animals are kept, meets setbacks (either by variance or by soundproofing the building) and development standards of the ordinance, as well as installs an appropriate waste collection system in conjunction with the State and County Health Departments, staff’s concern for the public health would be eliminated and petitioner’s use would not subvert the general purposes of the ordinance.

Until those issues are remedied, staff cannot recommend in favor of a land use that places the public health in jeopardy and does subvert the general purposes served by our ordinance.

Regarding the ballot items for the variances, BZA-1906:

The Area Plan Commission on April 16, 2014 determined that the variances requested **ARE NOT** use variances.

And it is staff’s opinion that:

1. Granting variance #2 (setback) **WILL NOT** be injurious to the public health, safety and general welfare of the community. There will be no negative affects of a non-soundproofed building 21’ closer to the property line of a 26-acre undeveloped field. But, because of health department concerns and the potential for airborne disease, allergens and vermin, granting variance #1 (temperature control and ventilation) **WILL** be injurious to the public health.
2. Regarding variance #2, because the adjacent property most impacted by the setback request is a farm field, use and value of the area adjacent to the request **WILL NOT** be affected in a substantially adverse manner. However, granting variance request #1 **WILL** substantially adversely affect neighboring properties. According to the health department, the current un-ventilated structure presents easy access for birds, rodents and other vermin. A proper air system can restrict entry for disease-carrying animals.
3. Though petitioner could meet the development standards of a kennel, a 179’ setback instead of 200’ for a non-soundproofed building (variance #2) **WILL NOT** substantially adversely affect neighboring uses. Allowing a non-ventilated and temperature controlled building (variance #1) poses public health risks, including vermin and **WILL** affect adjacent property in a substantially adverse manner.

Regarding both variances:

4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. There is nothing unusual about the site that would impede Mr. Sanders’ ability to fulfill the requirements of the ordinance.
5. The ordinance requirements for a kennel are standard regardless of zoning district, age of

the kennel or whether it is for boarding or breeding. Mr. Sanders was aware of those requirements when he filed the first request for special exception back in May 2013 and is now opting not to meet those standards. Therefore, strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. It is only petitioner's desire to not soundproof, temperature control and ventilate the building that is necessitating the variance requests. If the building was properly insulated, ventilated and temperature controlled, no variances would be necessary. Mr. Sanders has also been aware of these requirements since at least May 2013. Therefore, the hardship involved **IS** self-imposed *and* solely based on a perceived reduction of economic gain.

5b. As the standards of the ordinance could be met, the variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship.

VARIANCES STAFF RECOMMENDATION:

Variance #1 (temperature control and mechanically ventilate): Denial

Variance #2 (179' setback for a non-soundproofed building instead of 200'): Denial

Regarding the ballot items for the special exception (BZA-1907):

At its meeting on April 2, 2014, the Executive Committee of the Area Plan Commission voted that granting this request would not substantially adversely affect the Comprehensive Plan.

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for a breeding kennel in the AA zoning district.

And it is staff's opinion that:

2. As long as all development standards of UZO 4-11-3(b)(2)—kennel buildings are mechanically ventilated and temperature controlled—are met, and petitioner submits a new site plan reflecting the appropriate number of parking spaces, the requirements and development standards for the requested use as prescribed by the Unified Zoning Ordinance **WILL** be met. The site plan shows compliance with minimum lot size and other required setbacks.
3. However, because of the many concerns regarding public health and safety, granting the special exception **WILL** subvert the general purposes served by the Ordinance.
4. Granting the special exception **WILL NOT** materially and permanently injure other property or uses in the same district and vicinity because of:
 - a. Traffic generation: only one extra vehicle will visit the site monthly;
 - b. Placement of outdoor lighting: the petition states that no additional lighting will be added;
 - c. Noise production: there are no neighbors within 1000' of the site in question. Noise produced by dogs will not have a negative affect on surrounding, agricultural properties; and
 - d. Hours of operation: the proposed hours of operation, 7 am until 10 pm, would not be intrusive to this rural, sparsely populated area.

SPECIAL EXCEPTION

STAFF RECOMMENDATION:

Denial

If approved, staff recommends the following three conditions:

Petitioner must:

1. Submit a new site plan showing parking compliance;
2. Provide staff and County Health Department with evidence of compliance with UZO 4-11-3(b)(2); and
3. Receive approval from local and state health departments to install an appropriate waste disposal system.